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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIAN DAVID JOHNSON,

Defendant and Appellant.

F034615

(Super. Ct. No. 629214-8)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. John J. Gallagher, Judge.

Katherine Hart, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Robert R. Anderson, Senior Assistant Attorney General, Robert P. Whitlock and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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On September 4, 1998, two paramedics, a male and a female, were dispatched to assist appellant's ostensible girlfriend who was complaining of abdominal pain. Apparently displeased with the speed and manner of the paramedics' treatment, appellant followed them to their vehicle and severely beat them. The male suffered a facial fracture, trauma to the eye, resulting in vision problems, chipped teeth, and nerve damage

to three teeth. The female was knocked unconscious and suffered residual brain and neurological damage, including optical migraines and problems with vertigo.

On November 2, 1999, a jury found appellant guilty of two counts of using unlawful force resulting in serious bodily injury (Pen. Code, § 243[1], subd. (d)), and two counts of unlawful use of force resulting in injury to an emergency medical technician (§ 243, subd. (c)). The jury found true allegations that appellant personally inflicted serious bodily injury within the meaning of sections 667 and 1192.7.

The issue of appellant's prior convictions was bifurcated and tried before the court. The court found appellant to have suffered two prior strikes within the meaning of the three strikes law. Appellant was sentenced to two indeterminate 25 to life terms, to be served concurrently.

Appellant appeals only the court's findings that his two prior juvenile adjudications for discharging a firearm into an inhabited building (§ 246), and assault with a deadly weapon and/or by means likely to cause great bodily injury (§ 245, subd. (1)(a)), constituted serious and/or violent felony convictions within the meaning of the three strikes law.

TRIAL OF PRIOR CONVICTIONS

One of the records keepers for the California Department of Justice authenticated appellant's Department of Justice file. A Fresno Police Department identification technician confirmed that appellant's fingerprints matched those contained in his Department of Justice file.

The prosecution also introduced certified or authenticated copies of the following documents:

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1 Unless otherwise noted, all further statutory references are to the Penal Code.

1. The California Law Enforcement Telecommunication System printout for appellant;

2. A petition filed November 5, 1992, Juvenile Case No. 73624, alleging that appellant violated section 246 by discharging a firearm at an inhabited dwelling house;

3. A petition filed August 10, 1993, also filed in Juvenile Case No. 73624, alleging that appellant violated section 245, subdivision (a)(1) by committing an assault by means of force likely to produce great bodily injury;

4. The Probation Department's social studies and reports for all of violations alleged in Case No. 73624; ("the Probation Reports")

5. The court's Findings and Judgment in Case No. 73624; and

6. The Order of Commitment in Case No. 73624.

Appellant objected to the introduction of the probation reports, claiming they were inadmissible hearsay. The prosecutor explained that he was only offering the sections of the reports containing appellant's statements to the probation officer. Those sections read, in relevant part:

> "The minor told this officer that he was at a party with his cousin Sheryl Mabry. Johnson said at one point his cousin got mad at him and elbowed him in his mouth. Johnson told her to say she was sorry, but she refused. Johnson said that about 30 to 40 minutes later he returned home. Johnson stated 'She (Mabry) came home and went to the bathroom and then I got a bat swung at her, I hit her but I didn't mean to hit her, the bat slipped out of my hand and I hit her, I had a cast on my right hand.' Johnson added, 'I went outside and talked to my other cousin Robert, I walked off, I wasn't mad, I was shocked.'"

and:

> "... The minor stated that he, his mother, and his mother's boyfriend began arguing. The minor stated as he was getting ready to leave, his mother started the argument up again with him. At that point, according to the minor, his mother's boyfriend hit him and told everyone to leave. The minor stated that he went outside, got the gun and because he had seen his parents go into the bedroom, he shot at the TV. He stated he wasn't going to shoot them or hurt them."

The Court admitted appellant's statements from the probation reports, finding they were admissions (Evid. Code, § 1220) recorded by a public official in the regular course and scope of his duties (Evid. Code, § 1280).

Appellant and respondent agree the Probation Reports are the only evidence establishing that appellant personally committed the assault and personally discharged the firearm.

ISSUES ON APPEAL

Appellant contends that the trial court improperly admitted portions of the probation reports relating to the prior juvenile adjudications to establish that the convictions were for "serious" and/or "violent" offenses. He claims that the Probation Reports were hearsay, and that their admission violated his Fifth Amendment right to avoid self-incrimination and his Sixth Amendment right to counsel. Finally, appellant argues that his prior conviction for discharge of a firearm into an inhabited dwelling must be stricken because the court failed to explicitly find that the offence was in fact serious or violent.

THE TRIAL COURT PROPERLY FOUND APPELLANT'S PRIOR JUVENILE ADJUDICATIONS CONSTITUTED STRIKES WITHIN THE MEANING OF PENAL CODE SECTION 667.5

A. Prior Juvenile Adjudications as Enhancements Under Three Strikes Law

Section 667, commonly referred to as the "Three Strikes law," reflects the intent of the Legislature to "ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses." (§ 667, subs. (b).) The statute defines these prior convictions of a felony as: "(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any

offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state."

(§ 667, subd. (d)(1).) Section 667, subdivision (d)(3), lists the requirements for a prior juvenile adjudication to qualify as a "strike." It provides:

> "[d](3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if:
>
> "(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.
>
> "(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony.
>
> "(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.
>
> "(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code."

"Under paragraph (B), a prior juvenile adjudication qualifies as a prior felony conviction for Three Strikes purposes only if the prior offense is listed in Welfare and Institutions Code section 707(b) or is classified as 'serious' or `violent.'" (*People v. Garcia* (1999) 21 Cal.4th 1, 13.)

Appellant concedes that he was 17 at the time he committed the juvenile offenses, that he was found to be a fit and proper subject for the jurisdiction of the juvenile court, and that he was adjudged a ward of the court. He further admits that his prior juvenile adjudications are for offenses listed in Welfare and Institutions Code section 707, subdivision (b).[2] However, based on our ruling in *People v. Leng* (1999) 71 Cal.App.4th

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[2] Section 707, subdivision (b)(14), assault by means of force likely to produce great bodily injury and section 707, subdivision (b)(15), discharge of a firearm into an inhabited dwelling.

1 (*Leng*), he contends the People failed to prove that the adjudications were for "serious" or "violent" crimes.

In *Leng* we held that "a juvenile adjudication for an offense contained within Welfare and Institutions Code section 707, subdivision (b) may only constitute a strike if it is a serious or violent offense as defined in section 667.5 or 1192.7." (*Leng, supra*, 71 Cal.App.4th at p. 15.) We observed that "[I]f all of the offenses listed in Welfare and Institutions Code section 707, subdivision (b) were to be considered as strikes, it would expand the list of qualifying offenses beyond serious or violent felonies" and that "[s]uch an interpretation of section 667, subdivision (d)(3) is clearly violative of defendant's right to equal protection of the laws." (*Id*. at pp. 12, 13.)

Section 1192.7 provides that "any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm" is a serious felony. (§ 1192.7. subd. (c)(8).) Section 667.5 likewise defines violent felonies as including those wherein a defendant personally inflicts great bodily injury or personally uses a firearm in the commission or attempted commission of a felony. (§ 667.5, subd. (c)(8), §§ 12022.5, 12022.7.)

B. <u>Appellant's Probation Report Statements are Admissible</u>

Appellant's sole objection to the admission of the Probation Reports was that they constituted hearsay. The district attorney argued that the appellant's statement to the probation officers were admissions recorded by a public official with the course and scope of the official's duty pursuant to Evidence Code section 1280, and as such were admissible under *People v. Monreal* (1997) 52 Cal.App.4th 670 (*Monreal*.)

In *Monreal*, the court held that a defendant's admissions to the probation officer indicating personal use of a knife in the commission of a prior violation of section 245, subdivision (a)(1), were admissible to prove the serious felony nature of the prior because: (1) the statements qualified as admissions (Evid. Code, § 1220); (2) the summary of those admissions in the probation officer's report satisfied the requirements

of the official records exception (Evid. Code, § 1280); and (3) the probation officer's report of the statements was a reliable record of the defendant's admissions concerning the facts of the offense. (*Monreal*, *supra*, 52 Cal.App.4th at pp. 676-680.)

Monreal is not alone in its reasoning. Several of our fellow appellate districts have found that a defendant's admissions in a probation officer's report are admissible as part of the "record of conviction." (*People v. Mobley* (1999) 72 Cal.App.4th 761, 796; *People v. Goodner* (1992) 7 Cal.App.4th 1324, 1328; *People v. Williams* (1990) 222 Cal.App.3d 911, 916-917; *People v. Goodner* (1990) 226 Cal.App.3d 609, 614-616; *People v. Garcia* (1989) 216 Cal.App.3d 233, 237.)

We believe these cases are correctly decided.

1. The Probation Reports are Part of Appellant's Record of Conviction

A judgment of conviction only establishes proof of each element of the crime necessarily adjudicated therein. (*People v. Rodriguez* (1998) 17 Cal.4th 253, 261-262 (*Rodriguez*.) Thus, in *Rodriguez*, the Supreme Court found that section 245, subdivision (a)(1) could be violated in two ways that would not qualify as "serious" felonies under section 1192.7, subdivision (c):

> "First, one may aid and abet the assault without *personally* inflicting great bodily harm or using a firearm. Second, one may commit the assault with force 'likely' to cause great bodily injury without, however, *actually* causing great bodily injury or using a deadly weapon. Accordingly, the least adjudicated elements of the crime defined in section 245(a)(1) are insufficient to establish a 'serious' felony." (*Id*. at p. 261.)

Therefore, in *Rodriguez*, as here, an abstract of judgment showing only that the defendant pled guilty to a section 245, subdivision (a)(1) violation, did not establish the strike allegation. (*Id*. at p. 262.)

Accordingly, the Supreme Court has held that the trier of fact may look beyond the judgment to "the entire record of the conviction" to determine the circumstances of

the prior crime. (*People v. Guerrero* (1988) 44 Cal.3d 343, 355 (*Guerrero*.) The *Guerrero* decision, however, did not define the term "entire record of conviction," and as we observed in *In re Taylor* (2001) 88 Cal.App.4th 1100, California courts have struggled with what evidence can be considered when allegations of prior convictions or prior prison terms are involved.

The Supreme Court recognizes that the courts of appeal have defined the phrase "record of conviction" in varying ways -- technically, as equivalent to the record on appeal and more narrowly, as referring only to those record documents reliably reflecting the facts of the offense for which the defendant was convicted. (*People v. Reed* (1996) 13 Cal.4th 217, 223 (*Reed*).)

While acknowledging that probation reports are technically part of the record on appeal [Cal. Rules Court, rule 33], appellant argues that probation reports do not reliably reflect the facts of the offense, and thus may not be considered in evaluating the circumstances of the crime. We disagree.

2. *Appellant's Statements in the Probation Reports are Reliable*

Appellant cites *People v. Houck* (1998) 66 Cal.App.4th 350 for the proposition that probation reports cannot reliably reflect the facts of the offense. In *Houck*, the prior conviction resulted from a jury trial as opposed to a guilty plea. The appellate court held that under those circumstances, a preliminary hearing transcript could not be used to prove the facts of a prior conviction, because it was not reliable evidence of what was actually presented to and relied upon by the jury. The *Houck* court concluded that requiring the prosecution to produce evidence actually presented to the trier of fact would not be unduly burdensome, promoted fairness, and precluded the possibility that the underlying conduct will effectively be relititgated through the presentation of information that may not have been presented at trial. (*Id*. at p. 356.) Here, appellant contends, the probation reports are prepared after conviction, and thus could not have been presented to the trier of fact.

Houck is inapposite. Appellant apparently admitted the allegations of the juvenile petitions. As such, this case is analogous to those involving guilty pleas: there is no conduct to relitigate. Appellant's argument regarding the time of preparation of the probation report elevates form over substance. The "record of conviction" is not limited to events prior to judgment. (*People v. Woodell* (1998) 17 Cal.4th 448, 454- 455.)

Appellant claims that the lack of procedural safeguards in a probation interview render his statements presumptively unreliable. However, as the *Monreal* court observed, although a presentence probation interview is not recorded verbatim and the probation officer's summary is not made under oath, it is a record made close in time to the event (the interview), with the specific purpose of providing the court accurate information relevant to the court's sentencing decisions. (*Monreal, supra*, 52 Cal. App.4th at p. 679.)

> "Given this purpose, there is little reason to doubt the accuracy of the probation officer's report of defendant's admissions regarding the facts of his offense. The reliability of the report is further ensured by the fact that defendant had the opportunity to challenge the accuracy of the report at sentencing and to correct any misstatements. This fact obviates any need for a word-for-word transcription of a defendant's statement." (*Id*. at pp. 679-680; see also *People v. Garcia, supra*, 216 Cal.App.3d at p. 237.)

Appellant's inability to cross-examine the probation officer is irrelevant. The only statements introduced through the probation officer's report were appellant's. Appellant did not need to cross-examine the reports' authors to test the accuracy of his own alleged statements. Furthermore, he could have challenged these statements, both in the underlying proceeding or at his sentencing hearing. (*People v. Bloom* (1983) 142 Cal.App.3d 310, 320; *People v. Bowen* (1992) 11 Cal.App.4th 102, 107 [defendant may present evidence to correct any portion of probation report deemed insufficient, inaccurate, or based on unreliable information].)

We reject appellant's contention that absence of the sentencing transcripts from the juvenile proceedings prevented the trial court from determining whether the defendant's statements were actually challenged or refuted. The court was entitled to rely upon the

rebuttable presumption that an official duty has been regularly performed. (Evid. Code, § 664.) We cannot relieve appellant from his failure to rebut this presumption.

Appellant nonetheless argues that a juvenile's statements to a probation officer are inherently unreliable because there are "many reasons" why a minor would conceal the participation of an accomplice or admit to acts he or she did not commit. This theory must be rejected. While a defendant may be highly motivated to cooperate with the probation department, to appear contrite, and to take responsibility for his or her actions, in order to secure a lighter sentence, we will not presume that these motivations render a defendant likely to falsely admit to circumstances requiring a greater sentence. If appellant's suggestion were true, probation reports would be unreliable for any purpose, a result that is clearly not warranted under California law.

Probation reports play an important role in the California criminal courts. As one of the primary considerations in granting probation is "the nature of the offense," probation officers are legislatively required to investigate and issue a report upon the circumstances surrounding the offense and the prior record and social history of the defendant. (§§ 1202.7, 1203, subd. (b)(1), 1203c, 1203.10.) The probation officer must report his or her findings to the court and must file his or her written report in writing in the court records. (§ 1203.10) The probation report may, but need not, include a statement from the defendant, as the defendant is under no legislative compulsion to speak with the probation officer. (Cal. Rule of Court, rule 4.11.5(a)(4); *Goodner*, *supra*, 7 Cal.App.4th at pp. 1330-1332.)

Probation department evaluations play an even more important role in the juvenile court. As we observed in *In re L. S*. (1990) 220 Cal.App.3d 1100:

> "In the juvenile justice area it is the duty of the probation officer to prepare a social study of the minor for every disposition hearing after the juvenile court has found the minor to be a ward of the court pursuant to section 602. (§§ 280, 702; Cal. Rules of Court, rule 1495.) The social study shall contain 'such matters as may be relevant to a proper disposition

> of the case' and a 'recommendation for the disposition of the case.' (§ 280.) The juvenile court shall receive the social study into evidence at the disposition hearing (§ 706), and 'In any order of disposition the court shall state that the social study has been read and considered by the court.' (Cal. Rules of Court, rule 1495 [now rule 1492].)" (*Id*. at pp. 1103-1104, fn. omitted.)

The preparation, filing, and consideration of a current social study at a dispositional hearing is mandatory before a minor may be committed to the Youth Authority. (*Id*. at pp. 1104, 1106-1107.) The probation officer's report should address, among other subjects, "the circumstances and gravity of the offense committed by the minor." (*Id*. at p. 1104.) The social study may include "[a]ny statement the child chooses to make regarding the alleged offense," although the minor is under no legislative compulsion to speak with the probation officer. (Cal. Rules of Court, 1481(2); *People v. Macias* (1997) 16 Cal.4th 739, 753.)

In light of the foregoing, it has long been established that the information contained in probation reports (including hearsay) is sufficiently reliable for the court to determine whether to place a defendant on probation, to set the amount of restitution, and to evaluate his or her level of culpability when selecting an appropriate sentence. (§§ 1203 subd. (b)(3), 1203d, 1203.10; Cal. Rules of Court, rule 4. 411; *People v. Arbuckle* (1978) 22 Cal.3d 749, 754; *People v. Baumann*, (1985) 176 Cal.App.3d 67, 81-82; see *People v. Rivera* (1989) 212 Cal.App.3d 1153, 1160.) We find that a defendant's description of circumstances of his or her crime in a post-conviction probation interview is as reliable, if not more so, than a defendant's adoptive admission of facts of the preliminary hearing transcript or information.

3. *The Probation Reports are not Inadmissible Hearsay*

Although statements appearing in a probation report have been held to be hearsay and thus generally inadmissible under the hearsay rule (*People v. Williams*, *supra*, 222

Cal.App.3d 911), a defendant's own statement which appears in a probation report is admissible when it satisfies the admission exception to the hearsay rule. (*Reed*, *supra* 13 Cal.4th 217, at p. 230, citing Evid. Code, § 1220; *People v. Garcia*, *supra*, 216 Cal.App.3d at p. 237; and *People v. Abarca* (1991) 233 Cal.App.3d 1347, 1351; see also *People v. Mobley*, *supra*, 72 Cal.App.4th at p. 796; *Goodner*, *supra*, 7 Cal.App.4th at p. 1328; and *Goodner*, *supra*, 216 Cal.App.3d at pp. 615-616.)

The chief reasons for general rule of inadmissibility of hearsay statements are that such statements are not made under oath, the adverse party has no opportunity to cross-examine the declarant, and the jury cannot observe the declarant's demeanor while making statements. (*People v. Fuentes* (1998) 61 Cal.App.4th 956, 960-961.) The theory underlying the hearsay exception for admissions of a party is that "the policy of the [hearsay] exclusionary rule cannot reasonably be invoked by a party who is [himself] present and can testify in explanation or contradiction of the prior statement[.]" (1 Witkin, Cal. Evidence (4th ed., 2000) Hearsay, §90(2), p.793.) As explained above, appellant had ample opportunity to challenge the probation officers' reports. He cannot now complain that his statements are not admissions because he was motivated to -- but apparently did not -- lie when making them.

Moreover, the probation officer's report of appellant's admission (the second layer of hearsay) came within the hearsay exception for official records. (Evid. Code, § 1280)

> "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:
>
> "(a) The writing was made by and within the scope of duty of a public employee;
>
> "(b) The writing was made at or near the time of the act, condition, or event; and
>
> "(c) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

Unlike the business records exception to the hearsay rule, Evidence Code section 1280 allows the court to admit an official record or report, without requiring a witness to testify as to its identity and mode of preparation, if the court takes judicial notice or if sufficient independent evidence shows that the record or report was prepared in such a manner as to assure its trustworthiness. (*People v. Dunlap* (1993) 18 Cal.App.4th 1468, 1477 (*Dunlap*); *People v. Parker* (1992) 8 Cal.App.4th 110, 116-117 (*Parker*).) "Whether the trustworthiness requirement has been met is a matter within the trial court's discretion." (*Parker*, *supra*, 8 Cal.App.4th at p. 116.)

The trial court was required to take judicial notice of above cited statutes regarding the preparation and use of probation reports. (Evid. Code, § 451, subd. (a).) The statutes establish that "[t]he writing was made by and within the scope of duty of a public employee." (Evid. Code, § 1280, subd. (a).) The code sections also demonstrate that the written report was prepared at or near the time of the interview. After a minor is found to be a person described within Welfare and Institutions Code section 601 or 602, the court must hold a hearing to take evidence on the proper disposition of the child. (Welf. & Inst. Code, § 706.) The disposition hearing can be continued to receive the probation officer's social study, but only for a maximum of 45 days. (Welf. & Inst. Code, § 706; Cal. Rules of Court, rule 1489.) The social study must be submitted at least 48 hours before the disposition hearing is set to begin. (Cal. Rules of Court, rule 1492.) These timelines ensure that the probation officer's report is prepared close to the time the minor is interviewed, and again a court may rely on the presumption that an official duty has been regularly performed. (Evid. Code, § 664; see *People v. Martinez* (2000) 22 Cal.4th 106, 125-126; *People v. Goldberg* (1957) 152 Cal.App.2d 562, 576 [probation report presumed to be made in accordance with the code]; *People v. Wilson* (1954) 123 Cal.App.2d 673, 674 [same].)

The final foundational requirement for section 1280, subdivision (c) is that the "sources of information and method and time of preparation were such as to indicate its

trustworthiness." "The trustworthiness requirement ... is established by a showing that the written report is based upon the observations of public employees who have a *duty* to observe the facts and report and record them correctly." (*People v. Baeske* (1976) 58 Cal.App.3d 775, 780.) As we noted in *Dunlap*, "[w]hile there is no direct evidence as to the method and time of preparation, we again believe the trial court could properly rely on judicial notice of the pertinent statutes and consider the presumption that official duty was regularly performed to satisfy itself that the record was sufficiently trustworthy." (*Dunlap*. *supra*, 18 Cal.App.4th. at pp. 1439-1480.)

4. *Admission of Appellant's Statements in the Probation Reports Did Not Violate His Fifth or Sixth Amendment Rights*

Appellant contends that the court's use of the probation report admissions violated his Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel. Respondent correctly observes that appellant has waived these grounds for appeal by failing to raise them at trial.

Appellant objected to the use of his statements in the Probation Reports on *Boykin-Tahl*[3] grounds:

> "Your Honor, since the Court is right there at the admission, we are going to object on the grounds that he was not given his *Boykin-Tahl* rights and just ask the Court, for the record, to see if the record shows that, because I think the case law allows us to attack a prior conviction under *Boykin-Tahl* issues."

Boykin-Tahl rights refer to the well-settled principle that a court may not accept a guilty plea from a defendant, even if represented by an attorney, until it determines that defendant is aware of the constitutional rights waived by pleading guilty, namely, the

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3 *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122 (*Boykin/Tahl*).

privilege against compulsory self-incrimination, the right to trial by jury and the right to confront his accusers. (*Boykin v. Alabama*, *supra*, 395 U.S. 238; *In re Tahl*, *supra*, 1 Cal.3d at p. 132; *People v. Sumstine* (1984) 36 Cal.3d 909, 914.)

However, appellant's argument on appeal is not that he did not understand his rights before admitting the juvenile adjudications, (i.e., "pleading guilty") but that he did not understand his rights prior to speaking with the probation officer after admitting the pleas. Since the *Boykin-Tahl* doctrine has no application to probation interviews, the objection did not preserve his Fifth and Sixth Amendment claims for review.

Furthermore, even if we assumed that appellant's *Boykin-Tahl* did preserve his Fifth and Sixth Amendment arguments, appellant nonetheless waived the objection by failing to bring a written *Boykin-Tahl* motion.

The trial court observed that the record "really didn't show that he waived his statutory and constitutional rights as required under the *Boykin-Tahl*." In response, appellant's counsel simply requested documents that relate to "any admissions or rights given by the Court so that we can prepare a written motion in regard to denial of *Boykin-Tahl*." The trial court granted appellant leave to file a written motion to strike the prior convictions on *Boykin-Tahl* grounds, but appellant apparently never availed himself of this opportunity.

THE TRIAL COURT PROPERLY FOUND THAT APPELLANT'S ADJUDICATION FOR VIOLATION OF PENAL CODE SECTION 246 WAS SERIOUS OR VIOLENT WITHIN THE MEANING OF SECTIONS 667.5 OR 1192.7

Appellant contends that the trial "never specifically stated that it found the first adjudication to be for a 'serious' or 'violent' offense" and that the failure to make these findings requires that they be stricken pursuant to our decision in *Leng*, *supra*. This contention is without merit.

The court's minute order of November 30, 1999, is perfectly clear, "The Court finds the 1st and 2nd prior convictions stated on the 1st Amended Information to be under the 3 strikes law."

The reporter's transcript of the hearing is in accord, although less succinct. In rendering its sentence, the trial court initially noted that section 246 was listed as a qualifying offense in section 707, subdivision (b)(15). The court further observed that appellant was made a ward of the juvenile court for that offense, and the offense was found true. The Court admitted appellant's remarks to the probation officer that "he went outside, got a gun and because he had seen his parents go into the bedroom, he shot at the TV." The Court concluded:

> "So, therefore, the Court finds that under -- that the requisites set forth in People versus Garcia, 21 Cal.4th 1, at page 13, and People versus Lang, L-a-n-g, 71 Cal 4th, at page one, which is a Fifth District case decided in March of 1999, in the same subject -- and the Lang, L-a-n-g, case states, at page 14, that the crimes which are not listed in Welfare and Institutions Code section 707(b), but which are serious, violent felonies and, also, the strike offenses when they apply are approved in a juvenile or adult proceeding. Now, of course, this is a 707(b), subdivision 15 offense. And, therefore, the Court finds the prior conviction, alleged conviction, but it would be a juvenile adjudication recognized under the three strikes law as a prior conviction …."

The trial court's finding in this case is sufficient.

CONCLUSION

The trial court did not err in admitting those portions of the probation reports in Case No. 73624 which contain appellant's statements to the probation officers, or in finding that appellant had twice been adjudicated to have committed serious and/or violent crimes while over the age of 16 and a ward of the juvenile court for those crimes.

DISPOSITION

The judgment is affirmed.

_____
Ardaiz, P.J.

WE CONCUR:

_____
Dibiaso, J.

_____
Harris, J.